

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

AEBEN MUSTAFA,

Plaintiff,

-against-

ACCUPRESS MFG., INC.

Defendants.

Index No.:  
CV 004851 (DGT)

AFFIDAVIT

HALKIN TOOL, LTD.

Third-Party Plaintiff,

-against-

ELIOU STEEL FABRICATION, INC.,

Third-Party Defendant.

STATE OF NEW JERSEY )

ss.:

COUNTY OF BERGEN )

NEAL A. GROWNEY, P.E., being duly sworn, deposes and says the following  
under the penalty of perjury:

1. I am not a party to the above-captioned action.
2. This Affidavit is submitted in support of Plaintiff's opposition to  
Defendant Halkin Tool, LTD.'s Motion for Summary Judgment.

3. I am a Mechanical Engineer and am currently employed with Neal A. Growney & Assoc., LLC providing technical support, investigations, analyses, reports and testimony in areas on mechanical and industrial engineering. I hold a Bachelors degree in Mechanical Engineering. I am registered as a Professional Engineer with the State of New Jersey, License #20092. I am a member of the National Mechanical Engineering Honor Fraternity, *Pi Tau Sigma*. I am a member of the American National Standard Safety Committee for Woodworking Machinery; ANSI 01.1, the American National Standard Safety Committee for Three-roller Printing Ink Mills ANSI B65/NAPIM 177.1; and the American National Standard Safety Committee for Printing Ink Vertical Post Mixers, ANSI B65/NAPIM 177.2; and have participated in the writing of their ANSI Safety Standards. I also participated in the writing of the first Metal Framing Manufacturers Association industry standard. I am also a member of the American Society of Mechanical Engineers, the American Society of Safety Engineers, the American Welding Society, the Society of Automotive Engineers, and the Human Factors and Ergonomics Society. I was employed as a Field Service Technician at Bell Eastern Corporation, an Associate Engineer at Orange & Rockland Utilities, Inc., a Design Engineer at Hewitt-Robbins, Inc., an Assistant Plant Engineer at J. Wiss & Sons Company, a Project Engineer at The Pantosote Company, Vice-President of Engineering at Versabar Corporation, and General Manager at Tri-State Quikrete. I have attended lectures, courses and seminars including: Supervisors Safety Program by the New Jersey Manufacturers Insurance Company; Roll Forming Systems by the Fabricating Manufacturers Association; and Industrial and Commercial Power Distribution, by the Electrification Council. My engineering education has included the study of machine

design, automatic controls, strength of materials, physics, mechanics, statics and dynamics, and electrical circuits and controls. My mechanical engineering experience spans approximately thirty-seven years. It includes over twenty-five years of safety experience and responsibility in metal work manufacturing, four of which was as the Chairman of the Corporate Safety Committee for a large metalworking company with over 1,200 employees. I have extensive machine guarding experience, including designing, specifying, fabricating, installing, maintaining, repairing, inspecting and supervising the utilization of machine guards and devices, including point-of-operation barrier guard, presence-sensing device, two-hand control device, interlocked moveable barrier gates, and pullback devices. I taught a college course at Newark College of Engineering that included the safe operation of industrial metalworking machinery.

4. I have designed and developed products for manufacture and designed and specified manufacturing methods, procedures and equipment. I am experienced with processes utilized to bend metal products, including press brake bending. I am familiar with press brake operations and have over seventeen years<sup>1</sup> of hands-on press brake experience, and over twenty-five years of power press experience. I am familiar with the customs and practices in metalworking and fabrication of metal parts. I am thoroughly familiar with the literature, as well as standards, codes, rules and regulations relating to the safe use of industrial machinery, including press brakes. My training includes engineering practices and procedures and industrial safety practices and procedures.

5. While employed by Versabar Corporation, I had seventeen years of

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<sup>1</sup> A typographical error on page three of my expert's report of June 3, 2005 shows my hands on experience as seven years instead of seventeen years.

experience on press brake machines, similar to that which is the subject of this litigation.

~~Specifically, I designed a variety of products to be formed by press brakes and the press~~  
brake tooling associated with their manufacture. In order to test the effective use of the products and tooling I designed, I had to operate a press brake as a normal part of my job responsibilities and duties. As a result of my seventeen years of press brake experience, as well as my education, training, knowledge and experience in the field of mechanical engineering, I am familiar with the design, manufacture and operation of press brake machines such as that machine which is the subject of this litigation; and the safety devices, mechanisms and safeguards that were available for use on such machines. I am also familiar with the development and design of guards and safety devices for industrial machinery as a result of personal involvement in the design and development and application of such guards and devices.

6. I have been performing reconstruction of industrial accidents for more than ten years; the last five have been with my own firm, Neal A. Growney & Assoc., LLC. I have been routinely called upon to evaluate industrial machinery accidents and perform analytical reconstructions. I have performed over three hundred inspections and investigations of such accidents; including similar press brake accident injuries. I have been qualified in both state and federal courts of law. Attached hereto is my current curriculum vitae; it is included as part of this Affidavit.

7. In order to provide the opinions in this affidavit, I reviewed the following information: the deposition testimony of all the witnesses deposed prior to trial, all the documents, including plans, specifications, manuals, instructions and engineering drawings that have been exchanged regarding the machine by the manufacturer, the

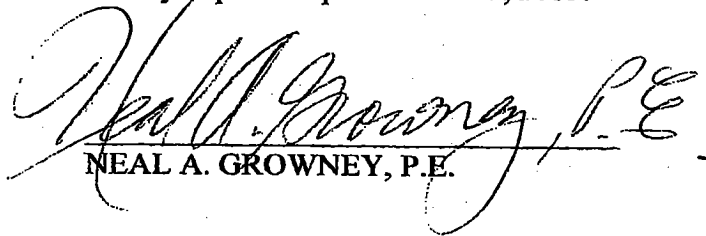
OSHA investigation documents and reports, the employer's papers and documents, including Employer's Report of Injury/Illness. Additionally, I personally inspected, photographed and video taped the subject machine on April 5, 2001 and December 7, 2001, and reviewed photographs and video tapes by others. I also reviewed literature relevant to the industry, available at, and prior to, the manufacture of the subject machine, including metalworking and engineering handbooks, industry safety directories, United States Patents, State of New York labor law Code Rule 19 (12 NYCRR 19) and relevant American National Standards.

8. The methodology I employed enjoys general acceptance in the community of safety engineers and others with specialized knowledge qualified to opine as to the reasonableness of an industrial product's level of safety for its intended use. My experience is useful and relevant. All standards, codes, rules, regulations, articles and authors cited are typical of the kind relied upon by qualified safety engineers performing investigations such as this. I have employed a level of intellectual rigor expected of an expert in this field. My opinions are given from a sound, reasoned basis. My methodology for such engineering investigations and analyses has been reviewed and accepted by United States District Courts.

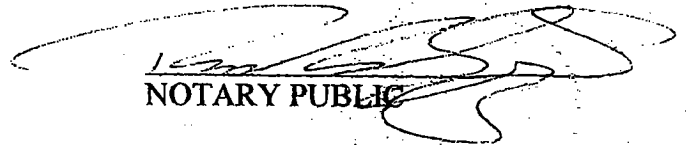
9. My efforts expended for this case have been at least equal to, and in fact greater than, the engineering investigation, research, analyses, testimony, opinions and reports I provided to Herzfeld & Rubin, P.C. for two cases, a plaintiff case: Mario Calle vs. D.J. Patiro Roofing Co., Inc., Stanley-Bostitch Co., Inc., The Stanley Works, Textron, Inc., and Bostitch Division of Textron, Inc., United States District Court,

Eastern District of New York, CV 98-5049, CV 97-3454, CV 99-544; and a defendant  
case: Joanna Romanello -against- Early Development Co and Fisher-Price, Inc., Early  
Development Co, LLA, -against- Intertech Plastics, Inc., Supreme Court of the State of  
New York, County of Richmond, Index No. 10802/02.

10. I hereby incorporate by reference my expert's report of June 3, 2005.

  
NEAL A. GROWNEY, P.E.

Sworn to before me this  
10 day of April, 2006.

  
NOTARY PUBLIC

TAMARA A. EZMAT  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES JUNE 02, 2010

**Neal A. Growney & Assoc., L.L.C.**

**265 Steves Lane  
Franklin Lakes, New Jersey 07417**

Phone: (201) 891-2768  
Fax: (201) 891-2783

**Neal A. Growney, P.E.  
Mechanical Engineer**

Investigations, technical analysis, research, reports and testimony on: industrial, construction, commercial and workplace accidents to property, equipment and persons. Experienced in design, installation, startup, safe operation, maintenance, modification, upgrade and repair of industrial machinery, equipment, systems. Operation and repair of construction machinery.

**Accidents relating to Manufacturing:** Documentation, standards, methods, procedures.

Materials: specifications, selection, testing. Training, operations, processes, production and safety. Repairs and maintenance.

**Manufacturing Processes:** Metal stamping, shearing, slitting, cutting, sawing, bending, forming, riveting, grinding, milling, drilling, tapping, roll forming, forging, heat treating, soldering, welding, fabrications, assembling, erecting, degreasing, polishing, buffing, tumbling, finishing, plating, painting, mixing, extruding, calendaring, drying, palletizing, filling, bagging.

**Accidents relating to Machine Design:** Guarding: point-of-operation, pinch points, inrunning nips, power transmission guarding. Controls: fail-safe, interlocks, component failure. Products. Instructions and warnings.

**Material Handling:** Raw material, in-process, finished goods, shipping, receiving. Truck unloading and loading, dock plates, pallet jacks, carts, hand trucks, forklifts, overhead hoists, monorails, storage racks, lifts, jacks, garbage trucks.

**Machinery:** Industrial - forklifts, power presses, press brakes, shears, roll formers, feed reels and cradles, tooling, dies, fixtures, steels, pull backs, sweep guards, gate devices, forge hammers and presses, ovens, dryers, furnaces, gas generators, lead pots, induction and resistance heaters, grinders, drills, tappers, saws, lathes, milling machines, boring mills, planers, shapers, buffers, tumbling barrels, vibratory finishers, shot blasters, wheelabrators, parts washers, de-greasers, sludge separators, plating machines, rectifiers, silos, gates, chutes, conveyors, bucket elevators, shaker screens, fans, blowers, dust collectors, bag houses, bin vents, scrubbers, precipitators, sprockets, chain drives, V-belts drives, slings, chains, wire ropes, valves, mixers, controllers, feeders, packers, sealers, palletizers, scales, shrink wrappers, compressors, pumps, gearmotors, reducers, mills, extruders, calendars, ladders, racks, platforms, railings, strut, metal framing systems, pipe hangers, cable trays, concrete inserts, welders, torches, hand and power tools, pneumatic conveying systems, pressurized containers.

Construction - forklifts, log stackers, log splitters, stump grinders, loaders, back hoes, scrapers, hoists, cranes, conveyors, compressors, pumps, welders, torches, generators, lifts, ladders, scaffolds, hand and power tools.

**Safety:** OSHA - codes, standards, training, inspections, personal protective equipment, confined space permits, fall protection, Material Safety Data Sheets (MSDS), Hazardous Materials Communications (Hazcom), emergency evacuation plans, hearing conservation, sound level measurements, warning signs, railings.

**Fire Protection:** Installations, code conformance, inspections, repairs, upgrades. Operations: wet and dry sprinklers, CO2, dry powder, Halon systems. SCBA, valves, doors.

**Buildings:** Industrial and commercial construction, maintenance, repairs, alterations, inspections, code conformance, egress, security. Gas, electric, water, plumbing, heating, HVAC, utilities.

**Regulatory Compliance:** DOT drivers' logs, Environmental Pollution Control permits.



**Neal A. Growney & Assoc., L.L.C.**

**265 Steves Lane  
Franklin Lakes, New Jersey 07417**

(201) 891-2768

**Neal A. Growney, P.E.  
Mechanical Engineer**

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|-----------------------|---|---|
| 2000<br>to<br>Current | <b>Neal A. Growney &amp; Assoc., L.L.C.</b><br><b>Manager</b><br>Provide technical support for the resolution of litigation involving mechanical and industrial engineering questions.  | <b>Forensic Engineers</b>                     |
| 1996<br>to<br>2000    | <b>Robson Lapina, Inc.</b><br><b>Associate</b><br>Provide technical support for the resolution of litigation involving mechanical and industrial engineering questions.   | <b>Forensic Engineers</b>                     |
| 1994<br>to<br>1995    | <b>Tri-State Quikrete</b><br><b>General Manager</b><br><b>Operations:</b> Oversee all efforts including: production, purchasing, materials, quality, personnel, safety, training, Bi-lingual communications, environmental, DOT regulatory compliance, equipment installations, maintenance, repairs and distribution. Two shifts, 5 1/2 days, including in-house and contract truckers.<br><b>Training:</b> Forklift Driver, Emergency Evacuation, Confined Space, Lock Out/Tag Out, and First Aid, equipment startup.<br><b>Safety:</b> Specified safety equipment, procedures, inspections, and communications. Installed machine guarding, two-hand operator controls, upgraded exhaust venting, railings, ladders and platforms; upgraded electrical disconnects for code conformance. Administered: hearing, respirator and pre-employment testing; substance abuse policy.<br><b>Machinery Installations:</b> Palletizer, compressor, air dryer, belt and chain conveyors, weighing scales, shaker screens, bin vents, pneumatic conveyors.  | <b>Dry Packaged Concrete Mix Manufacturer</b> |
| 1977<br>to<br>1994    | <b>Versabar Corporation</b><br><b>Vice President of Engineering</b><br><b>Engineering:</b> All engineering functions; methods; standards; quality assurance; equipment specifications and installations, engineering documentation for catalogs, design and maintenance of tooling, wrote claims for U.S. Patent of a concrete insert. Installed, power presses, a roll forming line, hoists.<br>Administered Underwriter's Laboratory (UL®) compliance program.<br><b>Facilities:</b> Designed production layout and building alterations to accommodate layout. Oversaw alterations, electrical upgrades and repairs.<br><b>Safety:</b> Directed OSHA. Designed, implemented: Power press, hoist and lifting sling inspections; Lock Out/Tag Out; Material Safety Data Sheets; NJ Right-To-Know. Machine Guarding - designed, specified and oversaw the installation of: point of operation guarding, including barriers and presence sensing (light beam) device; power transmission guarding. Specified and installed safety signs.<br><b>Products:</b> Designed, developed, specified, tested and produced new products including: Riveted back-to-back channels, support brackets for cable trays, cast aluminum splices, | <b>Metal Framing Systems Manufacturer</b>     |



new fittings, prepainted, stainless steel and custom parts.

**Manufacturing:** Directed: scheduling, production, receiving and shipping.

Processes included roll forming, stamping, punching, forming, welding, parent metal riveting, drilling, tapping, sawing and assembling of: carbon, stainless, pre-painted and galvanized steel, and aluminum, products.

**Standard:** Participated in the writing of the first metal framing industry standard:

The Metal Framing Manufacturers Association Standard, MFMA-1.

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|--------------------|--|-------------------------------------|
| 1976<br>to<br>1977 | <b>The Pantesote Company</b><br><b>Project Engineer</b>  | Vinyl Plastic Manufacturer          |
|                    | Provided engineering for facilities improvements, equipment installations, material handling and environmental control projects.   |                                     |
| 1969<br>to<br>1976 | <b>J. Wiss &amp; Sons Company</b><br><b>Assistant Plant Engineer</b>   | Cutlery Manufacturer                |
|                    | Provided engineering services for factory and office operations, equipment installations, maintenance and repairs. Supervised electric, gas, water, oil, sewer utilities, and fire protection systems. Oversaw generation of endothermic gas and HVAC operations.  |                                     |
|                    | <b>Facilities:</b> Construction, repairs and alterations of heavy metalworking manufacturing plants and office facilities, including: HVAC, exhaust systems and pollution control.   |                                     |
|                    | <b>Machinery and Equipment:</b> Designed, specified and oversaw the installation, repair, maintenance of production equipment, and fabrication of repair parts. Equipment included: Power Presses, Forge hammers and press, electric induction and resistance heaters, heat-treating furnaces, pots and ovens, industrial washers, grinders, buffers, vibratory finishers, central grinding cooling systems.                   |                                     |
|                    | <b>Fire Protection:</b> Wet and dry sprinklers; CO2, dry powder systems; emergency egress.   |                                     |
|                    | <b>Safety:</b> Chairman – Corporate Safety Committee. OSHA, Factory Mutual and Compensation Insurer safety inspections. Administered Supervisor's Safety Training Program. Design, fabricate, specify and supervise installations of machine guards and devices for production equipment including: barrier guards, Possons Pullbacks, class "A" gates for power presses. Hearing conservation, personal protective equipment. |                                     |
|                    | <b>Environmental:</b> Equipment: baghouse dust collectors, cyclones, oil mist separators, freon collectors, coolant clarifiers, sludge separators, electrostatic separators, smoke monitors. State and federal pollution control permits.  |                                     |
|                    | <b>Industry Associations:</b> Delegate to The Forging Industry Association, and The Hand Tools Institute.  |                                     |
| 1974               | <b>Newark College of Engineering</b><br><b>Adjunct Professor</b>   | - Part Time                         |
| 1969               | <b>Hewitt-Robbins, Inc.</b><br><b>Design Engineer</b>  | Bulk Material Conveyor Manufacturer |
|                    | Design structural and process components, subassemblies and complete bulk material conveyor systems.   |                                     |
| 1968<br>to<br>1969 | <b>Orange &amp; Rockland Utilities, Inc.</b><br><b>Associate Engineer</b>  | Electric and Gas Utility            |
|                    | Inspection of power plant construction for conformance to plans and specifications. Project engineer for a water main to power plant. Capital budget calculations.   |                                     |

— Neal A. Gowney & Assoc., L.L.C. —

1964 **Bell Eastern Corporation** Construction Equipment Dealer  
to **Field Service Technician**  
1968 Service and repair of: hydraulic and mechanical backhoes, cranes and forklifts;  
LeTourneau diesel/electric earthmovers, loaders, log-stackers and forklift trucks.  
Member, International Union of Operating Engineers.

Also	Samplemaker, small consumer appliance motors- Electro-mechanical aircraft instrument technician- Spot welder- Electric motor repair shop handyman- Parcel post and mail, delivery & pick up- Diesel/electric generator test technician-	Brevel Products Corp. Bendix Corp. Ford Motor Co. C.V. Hunt, Inc. U.S. Post Office. International Fermont Corp.
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### Standards Committees:

ANSI O1.1, Safety Requirements for Woodworking Machinery, Alternate.  
 ANSI B65/NAPIM 177.1, Three-roller Printing Ink Mills, and; ANSI B65/NAPIM 177.2,  
 Printing Ink Vertical Post Mixers; Revision Review Lists.  
 MFMA-1, Metal Framing Standards Publication – Metal Framing Manufacturers Association.

### License:

New Jersey Professional Engineer's License, # 20092.  
 New York City Fire Department Certificate of Fitness, G-95.

### Education:

B.S., Mechanical Engineering -	Newark College of Engineering
Graduate Management Certificate -	William Paterson College
Supervisors Safety Program -	New Jersey Manufacturers Insurance Company
New Jersey State Fire College -	New Jersey State Safety Council
Industrial and Commercial Power Distribution -	The Electrification Council
Roll Forming Systems -	Fabricating Manufacturers Association
LeTourneau Construction Equipment Service -	R.G. LeTourneau
Lift Truck Operator, Train-the-Trainer -	New Jersey State Safety Council
Occupational Hearing Conservation -	The Council for Accreditation in Occupational Hearing Conservation

### Academic Honors:

The National Mechanical Engineering Honor Fraternity, *Pi Tau Sigma*.

### Professional Associations:

American Society of Mechanical Engineers  
 American Society of Safety Engineers  
 American Welding Society  
 Society of Automotive Engineers  
 Human Factors and Ergonomics Society  
 National Safety Council

### Publications:

"Safety Introduction", The Accurate Table Saw. Co-authored with Ian Kirby and Les Winter,  
 P.E., Cambium Press, 1998.  
Bridgewood TSC-10C Table Saw Instruction Manual. Co-authored with Ian Kirby and Les  
 Winter, P.E., 1998.